

Supreme Court, U.S.
FILED

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No. 05- **OFFICE OF THE CLERK**

In the
SUPREME COURT of the UNITED STATES

Jeremiah Lee Irwin
Petitioner,

vs.

Commonwealth of Pennsylvania
Respondent,

On Petition for Allowance of Appeal
to the Supreme Court of the Commonwealth of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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Dated September 8, 2005

QUESTIONS PRESENTED

The Sixth Amendment of the United States Constitution guarantees that, "in all criminal prosecutions, the accused shall enjoy the right to a speedy...trial...

The Pennsylvania legislature has determined, as set forth in Pa. Rule of Criminal Procedure 600, that a defendant will be brought to trial within 365 days of the date of the complaint. The questions presented in this case are:

- (1) Whether the holding by the Pennsylvania Superior Court infringed upon the constitutionally protected right of the petitioner by overturning the trial court which dismissed the complaint due to the Commonwealth's failure to bring the petitioner to trial within the 365 days?
- (2) Whether the Pennsylvania Superior Court abused its discretion by rendering a decision in conflict with this Honorable Court's holdings on the same issue, thus creating an ambiguity in Pennsylvania on the interpretation of the 6th Amendment of the Constitution and Rule 600 of the Pennsylvania Rules of Criminal Procedure?

PARTIES TO THE PROCEEDINGS BELOW

Appellant in the petition to the Pennsylvania Supreme Court was petitioner, Jeremiah Irwin. Mr. Irwin was also the Appellee in the Pennsylvania Superior Court matter and the defendant in the court of common pleas proceedings. In addition to Mr. Irwin, there were three other co-defendants, Keith Wayne Keefer, Carrie L. Kline-Bettner and Jessica Minard. The Commonwealth for purposes of trial consolidated all four of the cases. In addition, the other three original defendants filed petitions to the Pennsylvania Supreme court and said petitions were also denied.

Appellee in the petition to the Pennsylvania Supreme Court was the Commonwealth of Pennsylvania. The Commonwealth of Pennsylvania was the appellant in the matter before the Pennsylvania Superior Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of the Commonwealth of Pennsylvania.

OPINIONS BELOW

The Supreme Court of Pennsylvania, by denying the petition for allowance of appeal, did not issue an opinion in this matter. The opinion of the Superior Court of Pennsylvania is a non-precedential decision, and, therefore, was not reported. The opinion of the Court of Common Pleas of Warren County is also unreported. A true and correct copy of the opinion of the Supreme Court is attached hereto, incorporated by reference, and referred to hereinafter as "Appendix A". The opinion of the Superior Court is attached hereto, incorporated by reference, and referred to hereinafter as "Appendix B". The opinion of the Honorable William Morgan of the Court of Common Pleas of Warren County, Pennsylvania, Criminal Division is attached hereto, incorporated

by reference and referred to hereinafter as "Appendix C".

JURISDICTION

The Pennsylvania Supreme Court, the court of last resort in the Commonwealth, issued its decision on June 10, 2005. This Honorable Court has jurisdiction to hear this petition pursuant to U.S.C.A. Const. Art. III § 2 and 28 U.S.C. § 2101(c).

STATUTORY PROVISIONS INVOLVED

This case involves the 6th Amendment of the United States Constitution and Rule 600 of the Pennsylvania Rules of Criminal Procedure.

6th Amendment provides as follows:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense"

Rule 600 of the Pennsylvania Rules of Criminal Procedure provides as follows:

"trial in a court case in which a written complaint is filed against the defendant, when the defendant is at liberty on bail, shall commence no later than 365 days from the date on which the complaint is filed".

STATEMENT OF THE CASE

On May 28, 2002, twenty-seven criminal complaints were filed against the Petitioner, Jeremiah Lee Irwin, charging numerous counts of burglary, theft, criminal trespass, receiving stolen property and criminal mischief. In addition, related charges were filed against 3 other co-defendants. Petitioner, Irwin was represented by the public defender's office and a preliminary

hearing was scheduled for December 4, 2002. At that time, one of the codefendants, Jessica Ann Minard, was not represented and the matter was rescheduled until January 27, 2003. While the crimes were alleged to have taken place in Warren County, the victims resided in another jurisdiction and it was the desire of the Commonwealth to keep all of the cases together so that the victims would not be inconvenienced. Therefore, at that time and over objections by Petitioner, the Commonwealth requested a continuance and the matter was rescheduled for March 19, 2003. At that time, the matter was heard and held over for court.

In order to progress this matter, the Petitioner, along with the other defendants, filed a waiver of arraignment on April 4, 2003 and the Commonwealth filed a motion to consolidate this case with that of the other co-defendants. The motion was granted on May 27, 2003. Petitioner filed a motion to dismiss on May 29, 2003. All other defendants filed similar motions based on the Commonwealth's failure to bring the defendant to trial within 365 days under Pa.R.Crim.P. 600 and the 6th Amendment of the United States Constitution. At the argument for the motion, the Commonwealth acknowledged that it was aware of a potential Rule 600 problem as early as January 17, 2003 and failed to present any evidence that would suggest that it took any steps from that point on to expedite the trial of this case or, in the alternative, seek relief from the local rules regarding trial scheduling in order to comply with the provisions of Rule 600. and the 6th Amendment. Accordingly, the Motion to Dismiss was granted on June 27, 2003 due to the failure of the Commonwealth to exercise due diligence in the prosecution of this matter.¹

In the opinion of the Honorable William Morgan, he

(Footnotes)

¹ The only excusable delay, according to the Superior Court, was that delay caused or connected to the minor judiciary at the preliminary hearing stage or the Court of Common Pleas and its local rules regarding trial scheduling. The delay caused by the police investigation as not excused by the Superior Court and thus, this argument will address only the excusable delay.

indicated that the mechanical run date for 6th amendment purposes was 365 days from the filing of the complaint, or May 28, 2003. The time delay that resulted from the District Justice continuance of the case was attributed to the Commonwealth, as was the time period from formal arraignment to the trial. The trial court pointed out that the Commonwealth did nothing to expedite the trial of this matter, in terms of seeking relief from the local rules, which prescribe the time from arraignment to trial and that the Commonwealth was in violation of Rule 600 of the Pennsylvania Rules of Criminal Procedure. This well-established rule provides that the Commonwealth has the burden of bringing the matter to trial within 365 days from the filing of the complaint. The trial court heard the testimony of all the individuals involved in the matter including the district magistrate, the office manager of the district attorney's office and the assistant district attorney in charge of the prosecution of this case. The trial court based its findings on the simple fact that the Commonwealth was aware of a Rule 600/6th Amendment problem early on in the prosecution due to the inexcusable delay prior to the preliminary hearing by the investigating police force. The rule does provide that certain time periods are excluded such as any time wherein the defendant has requested a continuance, been unavailable or waived his right to a speedy trial. In this matter, the trial court found that none of the exclusions applied. The Commonwealth sat on its hands and allowed the process to wash over them. They realized early on that they were facing a Speedy Trial/ Rule 600 issue and instead of petitioning the court for relief from the local rule, they did nothing and allowed the matter to be dismissed.

The Commonwealth took an appeal and the Honorable Superior Court heard the matter on September 15, 2004 and the court issued its opinion on January 21, 2005.

In that opinion, the Superior Court held that the delays occasioned by the District Justice and compliance with the local rules of Warren County could not be held against the

Commonwealth as these items were outside of the control of the prosecution, and thus reversed the decision of the trial court and remanded the matter.

The defendants filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court. Said petition was denied, without hearing, on June 10, 2005.

REASONS FOR GRANTING THE WRIT

Whether the denial of the petition for appeal by the Pennsylvania Supreme Court and the reversal of the Court of Common Pleas by the Pennsylvania Superior Court conflicts with the intent and clear language of the 6th amendment and the court's holding in *Barker v. Wingo*

Answer: Yes

In its decision, the Honorable Pennsylvania Superior Court has chosen to create its own interpretation of the 6th amendment and this court's holding in *Barker v. Wingo*. 407 US 514 (1972)

In its decision, the Pennsylvania Superior Court determined that the delays, which were necessitated by the Commonwealth, District magistrate's office and the local rules of Warren County, were "excusable delays" and could not be held against the Commonwealth for a speedy trial application. Such a decision flies in the face of this court's holding in *Baker* and its' prodigies.

As this court is aware, the leading case on the Speedy Trial Clause of the 6th amendment is *Barker, supra*. *Barker* spells out a 4-prong test to evaluate a claim under the 6th amendment. Such an inquiry consists of whether the delay was uncommonly long, whether the government is more to blame for the delay, whether the defendant has asserted his right to a speedy trial and finally, whether he has suffered prejudice as a result of the delay.

While each of the individual elements must be met, the entire test must be viewed on the whole *United States v. Duggert*, 505 U.S. 647 (1992). Thus, a single element has no greater weight than the entirety of the issue.

The first factor in addressing the issue of a 6th amendment violation is the length of the delay. In the matter at bar, the first criminal complaint was filed on May 28, 2002. This made the mechanical run date May 28, 2003. The case was scheduled for trial to begin on July 14, 2003, thus creating a delay from the date charges were filed until the date of trial of 58 weeks.

Through a number of delays, none of which were the result of actions by any of the defendants, the matter was first listed for trial to begin on July 14, 2003. This was 406 days from the initial filing of the complaint. This amounts to a delay of over 12 months. Although the defendant was not incarcerated, there was a significant restriction on his freedom as he was released on bond pending trial. This honorable court has held that a delay of 18 months to an individual who was released on bail was, "quite significant" and thus a violation of his right to a speedy trial. *United States v. \$8550*, 461 U.S. 555 (1983). Therefore the delay of 406 days must give rise to a careful examination of the remaining facts and elements of *Barker* to determine if the criteria has been met.

The second factor that was articulated in *Barker* was the cause for the delay. The lower court opinion is quite clear in its detailed timetable of delay. From the initial delay by the investigating officer, to the delay on the part of the District Justice in continuing the preliminary hearing on her own motion, to the assistant district attorney who insisted that the preliminary hearings be consolidated to avoid any "inconvenience" to the victims, to the district attorney who failed to even attempt to seek relief from the local rules in order to prosecute this matter in a timely fashion. At no time, was there any delay occasioned by the acts or inactions of the defendants. As a result, it defies logic how the Pennsylvania courts could deny an individual his constitutionally protected right when he had no involvement in the delay.

The next factor is the defendant's assertion of his rights to a speedy trial. While there is no record of the defendant filing any motion with that court, or making any affirmative assertion of his

desire to be tried under the 6th amendment, the lack of consent to the prolonging of this matter must be given attention and credibility. At no time did any of the defendants indicate their approval or consent to any of the continuances or postponements. Almost without exception, in order for a person to waive a constitutionally protected right, there must be some affirmative action. *Schneckloth v. Bustamonte* 412 U.S. 218 (1973).

In *Schneckloth*, the defendant was the subject of a search that was alleged by the police to be consensual. The court held that in order to justify consent to a non custodial search, the state must demonstrate the voluntary nature of the consent. The majority of the court held that before the waiver of a constitutionally protected right could be established, there must be an "intentional relinquishment or abandonment" of the right. In this matter presently before the court, there is no such evidence. Further to suggest that the accused failure to assert a right serves as an automatic waiver is absurd. *Id* at 236.

Mr. Justice Brennan pointed out in the dissenting opinion that the Court must always "scrutinize with great care claims that a person has foregone the opportunity to assert constitutional rights" *Id* at 278.

The effectiveness of any such waiver is based on its knowing, intelligent and voluntary nature. To rely on the fact that the defendant did nothing to show that he wanted to maintain his constitutional right to a speedy trial is to say that a criminal defendant must state to the authorities that he wishes to remain silent, and that would require him to indicated in some formal manner that he in fact, does want to retain his 5th amendment rights. However, the reality of the situation is that the defendant needs only to make an affirmative action if he wishes to relinquish his rights. If he wants to retain what Framers Jefferson and Madison gave him, he needs do nothing. That argument must apply to any waiver of a constitutionally protected right, such as the 6th amendment in this matter. Thus, the defendant's inactions serve to

demonstrate their desire to resolve this matter and bring this case to a final conclusion pursuant to the constitution.

The fourth and final element is the most difficult one to show. It is near impossible to show that one has been prejudiced in a matter where the triggering event never took place. Affirmative demonstration of prejudice is not required. *Moore v. Arizona* 414 U.S. 25 (1978). In *Moore*, the court restated its position in *Barker*, which indicated that any prejudice is not limited to possible prejudiced, but went on to indicate that disruption of the accused's life while awaiting trial. *Id* at 27.

In this case, all of the defendants were released on bail. Although, they were free on bail and not restricted by incarceration, there was still a substantial curtailment upon their liberty and thus a substantial prejudice to them. This court has held that any restriction on liberty is serious and must be addressed within the confines of a speedy trial issue *US v. Loud Hawk*, 474 U.S. 302 (1986)

Whether this case raises fundamental issues that could have a chilling effect on the 6th amendment rights of any individual charged with a crime in Pennsylvania by placing the administrative convenience and needs to the victim and the prosecution at the expense of constitutional protections

Answer: Yes

The Commonwealth was overly concerned with making the prosecution of this matter convenient to the victims, at the constitutional expense of the defendants. Such administrative convenience cannot over take the constitutional protections of the 6th amendment.

The record was clear that a large block of time was squandered away by the Commonwealth through the actions of the assistant district attorney attempting to consolidate all of the preliminary hearings of each of the 4 defendants for the sole purpose of creating convenience for both the prosecution and the victims, since the victims had to travel a substantial distance to attend the